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**Resolved: A just society ought to presume consent for organ procurement from the deceased.**

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## Topic Overview

#### Resolved: A just society ought to presume consent for organ procurement from the deceased.

#### Introduction:

The idea of presumed consent for organ procurement is not particularly new. Over the last few decades multiple countries (and several states within the United States) have toyed with various forms of presumed consent policies. The idea of presumed consent is based on a more basic idea that there should (and perhaps must) be a *default* choice for members of a society. For something like consent for organ procurement, the individual whose wishes may be in question is no longer alive. In the case (which very frequently occurs) that the individual left no clear evidence of their choice, the society must have a legal structure in place that enforces the *default choice* of those individuals. This default can either be an “opt-in” style policy, where it is presumed that all individuals *do not* wish to partake in the system. The United States currently has such a policy, where upon death; it is presumed that any individual does not wish to donate. Consultation with the family of the individual can allow donation to overcome this default in many cases. However, it is the burden of the individual to indicate that they wish to “opt-in” and become a donor. The alternative is to *presume consent* for organ procurement, or an “opt-out” system, wherein all individuals are automatically assumed to be organ donors. The burden, then, is placed on the individual to indicate if they do not want to become a donor. Most debates on this topic will revolve around a comparison of two primary arguments. The affirmatives contention that a “presumed consent” policy will save more lives through increased organ donation will be compared to the negative’s argument that such a policy will violate autonomy and rights of the individual. There are, however, several other large categories of offense for both sides of the resolution.

For anyone wishing to read a historical background of this topic, and a pretty well written overview of most arguments on both sides, I would recommend reading (or skimming) David Orentlicher’s article, “Presumed Consent to Organ Donation: Its Rise and Fall in the United States”:

http://pegasus.rutgers.edu/~review/vol61n2/Orentlicher\_v61n2.pdf

#### Affirmative:

The affirmative side of this topic should be well positioned to win many debates. There are a few basic paths to victory. Most affirmatives will use some kind of utilitarian perspective and will focus on the argument that presumed consent policy can and will save lives. There are multiple tools provided in this file to support this claim and strategy. The first component of this particular argument should be to establish that there are an enormous number of people that require an organ transplant of some kind to save their life and further that there is a frighteningly small number of organs donated compared to the need. This establishes a significant harm that exists in the world that could be remedied by a presumed consent policy. Most affirmative cases should include a contention that outlines exactly how much harm society is experiencing as a result of limited donations. This should be an incredibly useful point of ethos and emotional appeal to your judges. Thousands of people die every year, many every day, while waiting on the organ transplant waitlist. This impact will be very difficult for your opponents to contest, meaning that you will be able to leverage the unnecessary death of thousands in most debates.

After establishing that such a large problem exists in the status quo, affirmative cases must remember to include a significant defense of the argument that a presumed consent policy will lead to increased donation rates (or will allow for a sufficient level of donations to be considered a “just society). Winning this argument is pretty pivotal to the affirmative strategy. If the negative wins that presumed consent does not lead to an increase in donations, then we don’t access our huge impact about lives saved, and it will be significantly easier for the opponent to outweigh our impact with their autonomy arguments. Fortunately, there are a variety of persuasive arguments that support this claim. From a variety of statistics to comparisons of European countries that employ the presumed consent policy to the United States (which does not presume consent), there are lots of indicators that such a policy would improve donations. Spain, the country with the highest donation rates in Europe (and likely the world), moved to a system of presumed consent shortly before their donation rates began to significantly increase. Further, from a psychological perspective, many experts believe that a “default option” is a form of “recommended option” from the government, and are more likely to believe they agree with the default option, regardless of what option the default is. For a lot of people, laziness and procrastination are the largest impediment to donation – defaulting to consent allows all of these people to successfully donate. If the negative presents reasons why presumed consent policy does not increase donation, it will be very important to *compare* the statistics and reasons that support our claim to the negative’s claim. If there is one claim that the affirmative will be most reliant on winning in most debates, it is this one.

Beyond the obvious reason that an enormous organ donation waitlist is bad (people are dying without getting transplants), another category of affirmative offense stems from the development of the black market and organ trafficking. Many individuals on the transplant waitlist become particularly desperate for an option to save their life. The extreme need for organs has created a demand for organs harvested and sold by illegal sources. While the relevance of this argument is also contingent on the idea that presumed consent can increase donations, this is another useful impact that can give the affirmative in-roads to autonomy (and whatever other value the negative may read). Demand for organ trafficking allows countless people to be unfairly taken advantage of. Organized criminal groups exploit the impoverished and desperate. While the poor in many countries, amid a period of economic struggle, need new ways of funding food on the table – the sale of organs sometimes becomes an appealing option. Criminal groups often promise enormous amounts of money for organs (which they will later sell), but the impoverished who attempt to sell often don’t see any of the money they were promised. This form of victimization disproportionately affects minorities and the poor. This form of violence, further, can be spun as a violation of autonomy, and thus a way that the affirmative solves the negative’s value.

After establishing some offensive contentions, the affirmative should be prepared to answer the negative’s largest arguments against presumed consent. Preparing defense to the claims that presumed consent would violate autonomy and/or would be immoral should be prioritized by the affirmative. Because there is such a wide array of scholarship published on this controversial issue, there is literature comparing the ethical value of presumed consent versus other options. This means that there are several ways of achieving the ethical value of presumed consent. Some authors contend that violating the wishes of those individuals who want to donate (by not donating their organs) is ethically equal to mistakenly donating the organs of an individual who did not want to donate. Further, while autonomy is perhaps a value that should be prioritized for cognizant and live individuals, for brain-dead individuals, autonomy may no longer be a relevant consideration (or at least significantly less important than the welfare of the society). While the resolution does not specify a form of presumed consent policy, it is safe to assume that we can argue for a reasonable form of its implementation. Most society’s that have implemented presumed consent policies similarly have deployed a variety of safeguards to prevent unethical seizure of an individual’s organs. The family of the deceased individual is typically heavily involved in the process, and still allowed to opt-out, making presumed consent an ideal option. An affirmative case that has both a robust contention about how presumed consent saves lives and a significant defense of the ethical value of such a policy should have no problem winning lots of debates.

#### Negative:

The negative side of this topic has a variety of useful arguments to deploy. Most negative strategies would be well served to follow a two pronged approach of attacking the ethical value of presumed consent while simultaneously attacking the practical implementation of such a policy and its ability to actually affect organ donation.

There are a couple methods with which to question the ethics of presumed consent as a policy. First, negative’s should detail the effect of presumed consent on the autonomy and agency of the individual. The largest argument supporting this claim is that changing the “default” option would likely violate the wishes of many deceased persons. If it is true that failure to specify one’s wishes is one of the largest impediments to organ donation, the same would mean that countless people who in fact *did not* want their organs donated may fail to clearly indicate their desire to opt-out of the system. The justice system assumes that accidental punishment of an innocent person is significantly worse than accidental failure to punish the guilty. Therefore, we can reasonably assume that accidentally harvesting organs from someone who wanted their body to remain intact is a much worse ethical violation than accidentally not harvesting the organs of someone who wanted to donate. The medical industry is built upon principles of voluntary consent, and this idea should be extended to individual’s and their bodies even in death.

The second method of ethical challenge concerns the ways in which presumed consent policy is implemented. It raises the question of *who* is presuming consent? Doctors are heavily involved in the process of organ donation and ascertaining whether or not consent by the individual (and in many cases the family) has been given. History of presumed consent, in the United States, tells us that such a policy will often be deployed in morally deplorable ways. While many people have voiced fears about doctors prematurely trying to take organs for transplant (supposedly sometimes before the individual is even certainly dead), the presumption of consent is often unfairly applied to the poor and minorities while the donated organs themselves unfairly go to wealthy whites. Multiple enormous lawsuits were filed in the past because doctors and coroners abused the presumed consent policy to harvest the corneas of minorities significantly more frequently than any other bodies in their care. In many other cases, coroners went far out of their way to avoid finding objections of the individual or family to donation. While the policy of presumed consent may in theory promote good ideals, its use in practice leads to discriminatory practices that cannot be considered just.

After questioning the ethical appropriateness of presumed consent, negative strategies should attack the policy’s ability to solve organ donation. Framing these arguments as offensively as possible, your contention should assert that presumed consent policy ***reduces*** (instead of just saying it “does not increase) organ donation. This should include arguments about the risk of enormous backlash to presumed consent policy from individuals who fear the state taking control of their bodies. Introducing such a policy could thus alienate individuals who previously may have been likely donators to change their minds. Further, a variety of religious groups place great value on the sanctity and purity of the body even in death. These group’s wishes would in many ways be violated by a presumed consent policy, and would likely publicly backlash to presumed consent. If the affirmative has presented statistics or examples about the grandeur of presumed consent policies in other countries, the negative should question the reliability of these statistics. Areas with impressive donation rates that happen to also have presumed consent policies may not owe their success *exclusively* (if at all) to their policy of presumed consent.

A final mode of questioning the affirmative’s policy in practice is to present reasonable options to presumed consent that could similarly improve donation rates. If it is true there are other options (that are equally good, or perhaps preferable) to presumed consent, than we cannot conclude that presuming consent for organ procurement is something that a just society “ought” do. Investing in education and medical infrastructure empirically accomplishes a similar goal.

## Definitions

#### Resolution: A just society ought to presume consent for organ procurement from the deceased.

#### Just

Definitions:

1. guided by truth, reason, justice, and fairness: We hope to be just in our understanding of such difficult situations.

2. done or made according to principle; equitable; proper: a just reply.

3. based on right; rightful; lawful: a just claim.

4. in keeping with truth or fact; true; correct: a just analysis.

5. given or awarded rightly; deserved, as a sentence, punishment, or reward: a just penalty.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

The definition of just can help to set the terms for victory in the debate. While the definition of just itself may end up being less important than the value and criterion you provide to achieve a just society, setting the terms of the debate is very useful. Utilitarianism, deontology, and other ethical value’s chosen by either side of this topic will need to be discussed in terms of what is “just” or “unjust.”

#### Society

Definitions:

1. an organized group of persons associated together for religious, benevolent, cultural, scientific, political, patriotic, or other purposes.

2. a body of individuals living as members of a community; community.

3. the body of human beings generally, associated or viewed as members of a community: the evolution of human society.

4. a highly structured system of human organization for large-scale community living that normally furnishes protection, continuity, security, and a national identity for its members: American society.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

For the purposes of this topic, the 4th definition is probably most reasonable. Because the presumption of either donor or non-donor status is based in the law, we probably want to define society (in almost all debates) as a group that includes some sort of governmental organization. A tricky case could certainly be created that defined society more narrowly, however. It is important to note that the resolution specifies a “just society,” and not any specific society (like the United States). So debates will be discussing a theoretical society, rather than the correct course of action for any one country/society.

#### Ought

Definitions:

1. (used to express duty or moral obligation): Every citizen ought to help.

2. (used to express justice, moral rightness, or the like): He ought to be punished. You ought to be ashamed.

3. (used to express propriety, appropriateness, etc.): You ought to be home early. We ought to bring her some flowers.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

Defining the word “ought” is unlikely to significantly impact many debates, in almost all cases it will mean basically “should,” but any of the above definitions are probably fine, with 1 or 2 being best. You can perhaps define ought in a way (#2) that implies moral obligation to frame the “just” question more in terms of what is “moral.” Ought is a useful word to frame the value/criterion of each team, and the question of what is just. The word “ought” allows the affirmative to frame presuming consent as something that a just society *should* do. This may be relevant if there are examples of societies that are arguably *just* but do not presume consent for organ procurement.

#### Presume

Definitions:

1. to take for granted, assume, or suppose: I presume you're tired after your drive.

2. Law. to assume as true in the absence of proof to the contrary.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

The affirmative should take note of the second definition above. The clause, “in the absence of proof to the contrary,” is important when discussing a presumption, because it allows the affirmative to defend a form of presumed consent which allows individuals to “opt out” or indicate they do NOT want to be an organ donor, meaning that members of a presumed consent society are not forced to be organ donors if they don’t wish to, they simply must indicate they don’t want to be a donor. Negatives can perhaps define “Presumed” as a broader assumption that perhaps excludes the chance to opt out.

#### Consent

Definitions:

1. to permit, approve, or agree; comply or yield (often followed by to or an infinitive): He consented to the proposal. We asked her permission, and she consented.

2. Archaic. to agree in sentiment, opinion, etc.; be in harmony.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

The definition of “consent” is unlikely to be of much controversy in your debates. Some debates may define “Presumed consent” as a phrase, which is also unlikely to be relevant.

#### Organ

Definition:

Biology: a grouping of tissues into a distinct structure, as a heart or kidney in animals or a leaf or stamen in plants, that performs a specialized task.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

The definition of organ is unlikely to be disputed – hearts, kidneys, etc. seem like pretty stock interpretations of organs.

#### Procurement

Definition:

1. the act of procuring, or obtaining or getting by effort, care, or the use of special means: *The organ procurement procedure is very complicated.*

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

Procurement probably should be defined as a phrase (“organ procurement” as used in the example sentence above). This phrase limits the debate to consent for the organ’s procurement – whether the organs are used for research, donation, etc. is not specified (while most debates will assume donation, there is perhaps more ground to be investigated/utilized)

#### Deceased

Definitions:

a. the particular dead person or persons referred to.

b. dead persons collectively: *to speak well of the deceased*.

Source: Dictionary.com Unabridged, Based on the Random House Dictionary

Deceased probably refers to dead persons collectively, not much room for controversy here.

## AFF Case

Hello everyone, I would like to begin by extending a round of thank you to all involved. Today we are debating the resolution: Resolved: A just society ought to presume consent for organ procurement from the deceased. Before presenting my value, criterion and contentions, I will clarify a few of the key terms in today’s debate.

I define “justice” as “guided by truth, reason, justice, and fairness” (Dictionary.com Unabridged, Based on the Random House Dictionary)

And “presume” as “to assume as true in the absence of proof to the contrary” (Source: Dictionary.com Unabridged, Based on the Random House Dictionary).

Value: Utilitarianism

My value in today’s debate is utilitarianism, or maximizing the greatest possible amount of good for the greatest possible amount of people. The value of utilitarianism allows for a cost-benefit analysis debate and provides a comprehensible way to measure the impacts of our contentions without judge intervention.

Criterion: Minimizing loss of life

If a presumed consent policy would preserve significantly more lives than alternative policies, we must conclude that such a policy would in fact be just.

#### Contention One: A massive organ donor shortage is causing countless unnecessary deaths

#### The United States is amidst a tragic shortage of organ donation – 18 people a day die waiting for organs

JoNel Allecia, senior writer for NBC News, June 9, 2013, “Transplant outrage has a solution: more organ donors,” accessed July 22, 2013, http://www.nbcnews.com/health/transplant-outrage-has-solution-more-organ-donors-6C10256564

Only about 45 percent of adults in the U.S. -- nearly 109 million people -- are organ donors, a figure that donation and transplant experts say seems tragically low when the public’s attention is riveted on the lack of organs for a child such as Sarah.¶ “We have millions of people that are concerned or outraged about this particular situation, yet 55 percent don’t sign up to donate,” said David Fleming, the president and chief executive of Donate Life America, a transplant advocacy agency that tracks U.S. donors.¶ The proportion of adults signed up as organ donors varies surprisingly widely across the U.S., from Montana, where 82 percent of people older than 18 are designated donors, to New York, where 20 percent are signed up. In Vermont, the figure is only 5 percent.¶ People typically sign up for organ donation when they acquire or renew driver’s licenses, and state motor vehicles departments keep track of the records. But it’s also possible to register online any time, driver’s license or no.¶ The biggest barrier to registering is procrastination -- tempered with a little denial, said Sharon Ross, a spokeswoman for the San Diego affiliate of Donate Life.¶ “I think we, as a nation, as a whole, don’t think about death or want to think about death,” she said. “Many of our deaths are unexpected and sudden and we just don’t take the time to sign up.”¶ But when a situation like Sarah Murnaghan's arises, it suddenly commands attention.¶ "It really puts a face on the need," said Fleming. "I have a 10-year-old daughter. If my 10-year-old daughter needed an organ, I would be doing anything in my power to save her life."¶ More than 118,000 people are waiting for organs, including nearly 76,000 who actively need them now, according to OPTN. About 18 people die every day awaiting transplants.¶ “People sometimes believe that organ allocation is the primary issue, when in reality, the crisis is the lack of supply of organs for transplant,” Fleming said.

With so many people dying needlessly, presumed consent is an option that could easily solve this great injustice to our people.

#### Presumed consent increases organ donations significantly

Veronica English, deputy head of medical ethics, May 26, 2007, “Is presumed consent the answer to organ shortages? Yes,” accessed July 21, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1877927/

Of course, the key question is does it work? It is notoriously difficult to prove a causal relation between particular determinants and donation rates and to extrapolate from the experiences of one country to another. Nevertheless, careful analyses seem to indicate that presumed consent improves donation rates. Analysis of 28 countries found that those countries that consistently implemented a policy of presumed consent had higher donation rates than those that did not. Abadie and Gay did a detailed regression analysis comparing 22 countries over 10 years taking account of determinants that might affect donation rates: gross domestic product per capita, health expenditure, religious beliefs, legislative system, and number of deaths from traffic crashes and cerebrovascular diseases. They concluded that “When other determinants of donation rates are accounted for, presumed consent countries have roughly 25-30% higher donation rates than informed consent countries.” One explanation is that, even if the family has the final say, countries with presumed consent legislation have fewer refusals.

#### Contention two: Presumed consent is the most just option

A system of presumed consent can easily allow for respect of prospective organ donors autonomy and choices.

#### Presumed consent is a moral improvement – does not conflict with autonomy

Michael B. Gill, University of Arizona (Published in the Journal of Medicine and Philosophy), 2004, “Presumed Consent, Autonomy, and Organ Donation,” accessed July 19, 2013, http://www.u.arizona.edu/~gillm/media/articles/presumedconsent.pdf

I believe that a policy of presumed consent would be a moral improvement¶ over the current American system of organ procurement. In what follows, I¶ will try to make the case for presumed consent by addressing what I take to be¶ the most important objection to it. The objection is that if we implement¶ presumed consent we will end up removing organs from the bodies of people¶ who did not want their organs removed, and that this situation is morally¶ unacceptable because it violates the principle of respect for autonomy that¶ underlies our concept of informed consent. I will argue that while removing¶ organs from the bodies of people who did not want them removed is¶ unfortunate, it is morally no worse that not removing organs from the bodies¶ of people who did want them removed, and that presumed consent will¶ produce fewer of these unfortunate results than the current system. The¶ principle of respect for autonomy, I will argue, does not conflict with¶ presumed consent but speaks in its favor.

In the status quo, the wishes of countless people who wished for their organs to be donated, but failed to specify their wishes verifiably, are disregarded every day. A presumed consent law would remedy these errors, allowing the law to respect autonomy in a greater number of instances than otherwise.

#### Contention three: Presumed consent would alleviate demand for organs and reduce black market activity

#### Organ trafficking disproportionately coerces the poor into attempting organ selling – allows an enormous criminal black market

Dan Bilefsky, staff writer for the New York Times, June 28, 2012, “Black Market for Body Parts Spreads Among the Poor in Europe,” accessed July 22, 2013, http://www.nytimes.com/2012/06/29/world/europe/black-market-for-body-parts-spreads-in-europe.html?pagewanted=all&\_r=0

“Organ trafficking is a growth industry,” said Jonathan Ratel, a European Union special prosecutor who is leading a case against seven people accused of luring poor victims from Turkey and former communist countries to Kosovo to sell their kidneys with false promises of payments of up to $20,000. “Organized criminal groups are preying upon the vulnerable on both sides of the supply chain: people suffering from chronic poverty, and desperate and wealthy patients who will do anything to survive.”¶ The main supply countries have traditionally been China, India, Brazil and the Philippines. But experts say Europeans are increasingly vulnerable.¶ An estimated 15,000 to 20,000 kidneys are illegally sold globally each year, according to Organs Watch, a human rights group in Berkeley, Calif., that tracks the illegal organ trade. The World Health Organization estimates that only 10 percent of global needs for organ transplantation are being met.

The enormous organ shortage pushes desperate people into the black market. Dying individuals on the donor waitlist often seek illegal methods of obtaining organs. Similarly, impoverished individuals desperate to put food on the table for their families often attempt to sell their organs, and are taken advantage of – and often not paid – by criminal organizations. A presumed consent policy that increased organ donation would significantly reduce this kind of activity. For these reasons, the atomic bombing of Hiroshima was moral, as it saved and protected significantly many more lives than it inflicted.

## Aff Extension Evidence Organ Donation Shortage/Waitlist

#### The U.S. is amid a major organ shortage crisis

G.M. Abouna, Drexel University College of Medicine, January 2008, “Organ shortage crisis: problems and possible solutions,” accessed July 18, 2013, http://www.ncbi.nlm.nih.gov/pubmed/18261540

The demand for organ transplantation has rapidly increased all over the world during the past decade due to the increased incidence of vital organ failure, the rising success and greater improvement in posttransplant outcome. However, the unavailability of adequate organs for transplantation to meet the existing demand has resulted in major organ shortage crises. As a result there has been a major increase in the number of patients on transplant waiting lists as well as in the number of patients dying while on the waiting list. In the United States, for example, the number of patients on the waiting list in the year 2006 had risen to over 95,000, while the number of patient deaths was over 6,300. This organ shortage crisis has deprived thousands of patients of a new and better quality of life and has caused a substantial increase in the cost of alternative medical care such as dialysis.

#### Over 100,000 people await a lifesaving organ transplant

National Kidney Foundation, June 21, 2013, “Organ Donation and Transplantation Statistics,” accessed July 18, 2013, http://www.kidney.org/news/newsroom/factsheets/Organ-Donation-and-Transplantation-Stats.cfm

There are currently 118,617 people waiting for lifesaving organ transplants in the U.S.¶ Of these, 96,645 await kidney transplants.¶ Last year, 16,812 kidney transplants took place in the U.S. Of these, 11,043 kidney transplants came from deceased donors and 5,769 came from living donors.¶ Living Donor Age Breakdown:¶ Ages 18-34: 28.6%¶ Ages 35-49: 42.2%¶ Ages 50-64: 27.5%¶ Age 65+: 1.6%

#### Great shortage of organ donors – harvesting organs from recently deceased could solve

Marc Siegel, staff writer for Forbes, February 28, 2011, “The Troubling Shortage Of Organ Donors In The U.S.” accessed July 18, 2013, http://www.forbes.com/sites/marcsiegel/2011/02/28/the-troubling-shortage-of-organ-donors-in-the-u-s/

There is a great shortage of organ donors in the U.S., especially when it comes to kidneys. Over 110,000 Americans are on the list for organs, and more than 87,000 of these patients need kidneys. But only about 17,000 Americans get kidneys each year, while more than 4,600 die waiting.¶ Dialysis is only a temporizing measure, and life threatening complications mount quickly.¶ So how do we get organs to those who need them the most? For hearts, lungs, and livers, these precious donor organs tend to go to the youngest and healthiest patients. For kidneys it has always been the sickest and those who have waited in line the longest.¶ Now the United Network for Organ Sharing is considering changing the rules for kidneys to be more like hearts, matching younger donors with younger recipients and also giving priority to the healthier patients.¶ This decision makes sense in terms of quality life years, and certainly the terrible shortage of organs leads inevitably to some kind of rationing. But this pending change will be problematic for 50 and 60 year olds who are already on the list and may now have to wait longer. Is this fair to them? I don’t think so.¶ A kidney from a younger donor may last 20 or 30 years, taking a 50 year old to 80, a long period of time when he or she may be healthy.¶ In terms of using good health as a criteria for deciding who gets an organ soonest, it is too often subjective. Doctors are better trained to assess severity of illness and immediacy of need then to compare patients’ overall health status.¶ The real problem with organ transplant that leads to the various criteria for selection is the scarcity of donors and organs. A new pilot project in New York City is sending teams out with organ preservation units to harvest organs – kidneys – from those who have consented and are dying of cardiac arrest outside hospitals.¶ Since over 400,000 die in this manner in America every year – this program, if it works, could greatly increase the supply of organs for transplant.

### Presumed Consent increases donation

#### Presumed consent increases organ donation rates

Rithalia et al. (Amber Rithalia, research fellow, Catriona McDaid, research fellow,corresponding author Sara Suekarran, research fellow, Lindsey Myers, information specialist, and Amanda Sowden, deputy director), British Medical Journal, January 14, 2009, “Impact of presumed consent for organ donation on donation rates: a systematic review,” accessed July 18, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628300/

We conducted a systematic review investigating the impact of presumed consent legislation on organ donation rates; to our knowledge this is the first review to address this question. We found four good quality studies comparing organ donation rates between countries with and without systems of presumed consent. Each study examined the association between presumed consent and organ donation rates in mainly European countries between 1990 and 2002. All four found an association between presumed consent legislation and higher organ donation rates, and in three this was statistically significant.¶ Estimates of the size of the effect varied: two studies reported a 20-30% increase in organ donation, one reported 2.7 more donors per million population, and one reported 6.1 more donors per million population. There was evidence that factors other than presumed consent contributed to the variation in organ donation rates. In at least one study, mortality from road traffic accidents, the number of transplant centres, gross domestic product per capita, and health expenditure per capita were found to be important. Five before and after studies also showed an increase in organ donation rates following the introduction of presumed consent.

#### Changing the default donor status would increase donors

Eric J. Johnson and Daniel Goldstein, writers for Science Magazine, January 8, 2009, “Do Defaults Save Lives?” accessed July 21, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1324774

A different hypothesis arises from research¶ depicting preferences as constructed,¶ that is, not yet articulated in the minds of¶ those who have not been asked (14–16). If preferences for being an organ donor are¶ constructed, defaults can influence choices¶ in three ways: First, decision-makers might¶ believe that defaults are suggestions by the¶ policy-maker, which imply a recommended¶ action. Second, making a decision often involves¶ effort, whereas accepting the default¶ is effortless. Many people would rather¶ avoid making an active decision about donation, because it can be unpleasant and stressful. Physical effort such as filling out a¶ form may also increase acceptance of the default. Finally, defaults often represent¶ the existing state or status quo, and change¶ usually involves a trade-off. Psychologists¶ have shown that losses loom larger than the¶ equivalent gains, a phenomenon known as¶ loss aversion. Thus, changes in the default¶ may result in a change of choice.

#### A presumed consent default for organ donation significantly increases donations per million

Eric J. Johnson and Daniel Goldstein, writers for Science Magazine, January 8, 2009, “Do Defaults Save Lives?” accessed July 21, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1324774

Do increases in¶ agreement rates result¶ in increased rates of donation?¶ There are many reasons preventing¶ registered potential donors from actually¶ donating. These include: families’ objections¶ to a loved one’s consent, doctors’ hesitancy¶ to use a default option, and a mismatch¶ with potential recipients, as well as¶ differences in religion, culture, and infrastructure.¶ To examine this, we analyzed the actual¶ number of cadaveric donations made per¶ million on a slightly larger list of countries,¶ with data from 1991 to 2001 (27). We analyzed¶ these data using a multiple regression¶ analysis with the actual donation rates as dependent¶ measures and the default as a predictor¶ variable. To control for other differences¶ in countries’ propensity to donate,¶ transplant infrastructure, educational level,¶ and religion, we included variables known to serve as proxies for these constructs (5) and¶ an indicator variable representing each year.¶ This analysis presents a strong conclusion.¶ Although there are no differences¶ across years, there is a strong effect of the default:¶ When donation is the default, there is a¶ 16.3% (P < 0.02) increase in donation, increasing¶ the donor rate from 14.1 to 16.4¶ million (see figure, this page, blue line).¶ Using similar techniques, but looking only at¶ 1999 for a broader set of European countries,¶ including many more from Eastern Europe,¶ Gimbel et al. (5) report an increase in the¶ rate from 10.8 to 16.9, a 56.5% increase (see¶ figure, this page, red line). Differences in the¶ estimates of size may be due to differences in¶ the countries included in the analysis: Many¶ of the countries examined by Gimbel et al.¶ had much lower rates of donation.

### Shortage causes black market organ trafficking

#### Illegal organ trade is exploding because of donor shortage

Fox News, May 28, 2012, “Growing demand fuels black market organ trade,” accessed July 22, 2013, http://www.foxnews.com/health/2012/05/28/growing-demand-fuels-black-market-organ-trade/

Nearly 11,000 organs were bought on the black market in 2010, a sign that the illegal organ trade is booming, according to the World Health Organization.¶ There were nearly 107,000 organ transplants in 2010 – just 10 percent of the global need – and WHO officials and medical experts estimate 10 percent of those transplants were done with organs acquired on the black market, the Guardian reports.¶ "It's ever growing, it's a constant struggle," said a WHO official who monitors the illicit trade of organs. "The stakes are so big, the profit that can be made so huge, that the temptation is out there."¶ The Guardian contacted an organ broker in China who advertised his services under the slogan, "Donate a kidney, buy the new iPad!" He offered £2,500 for a kidney and said the operation could be performed within 10 days.¶ According to the paper, many patients go to China, India or Pakistan for the surgery, paying up to $200,000 for a kidney to gangs who harvest organs from people for as little as $5,000.

#### High demand for organs amid a shortage of donors causes a black markets to emerge

MSU Today, May 21, 2013, “Exposing the black market for human organs,” accessed July 22, 2013, http://msutoday.msu.edu/360/2013/exposing-the-black-market-for-human-organs/

Many who live in poverty in Bangladesh resort to extreme measures in order to survive: selling their organs. In the first in-depth study of its kind, MSU’s Monir Moniruzzaman details his time spent infiltrating the black market for human organs to expose the often horrific experiences of victims and the consequences of organ trafficking.¶ The organ trade is thriving in Bangladesh, where 78 percent of residents live on less than $2 a day. Moniruzzaman, assistant professor in the Department of Anthropology and the Center for Ethics and Humanities in the Life Sciences, says the average quoted price of a kidney is 100,000 taka, or $1,400 U.S. dollars, but that figure has dropped as organs donated by the poor are in abundant supply. Donors rarely receive the compensation promised, and complications that result from surgeries can lead to chronic pain, depression, social isolation, and inability to work.

#### Organ trafficking victimizes the poor

Dan Bilefsky, staff writer for the New York Times, June 28, 2012, “Black Market for Body Parts Spreads Among the Poor in Europe,” accessed July 22, 2013, http://www.nytimes.com/2012/06/29/world/europe/black-market-for-body-parts-spreads-in-europe.html?pagewanted=all&\_r=0

BELGRADE, Serbia — Pavle Mircov and his partner, Daniella, nervously scan their e-mail in-box every 15 minutes, desperate for economic salvation: a buyer willing to pay nearly $40,000 for one of their kidneys. The couple, the parents of two teenagers, put their organs up for sale on a local online classified site six months ago after Mr. Mircov, 50, lost his job at a meat factory here. He has not been able to find any work, he said, so he has grown desperate. When his father recently died, Mr. Mircov could not afford a tombstone. The telephone service has been cut off. One meal a day of bread and salami is the family’s only extravagance.¶ “When you need to put food on the table, selling a kidney doesn’t seem like much of a sacrifice,” Mr. Mircov said.¶ Facing grinding poverty, some Europeans are seeking to sell their kidneys, lungs, bone marrow or corneas, experts say. This phenomenon is relatively new in Serbia, a nation that has been battered by war and is grappling with the financial crisis that has swept the Continent. The spread of illegal organ sales into Europe, where they are gaining momentum, has been abetted by the Internet, a global shortage of organs for transplants and, in some cases, unscrupulous traffickers ready to exploit the economic misery.¶ In Spain, Italy, Greece and Russia, advertisements by people peddling organs — as well as hair, sperm and breast milk — have turned up on the Internet, with asking prices for lungs as high as $250,000. In late May, the Israeli police detained 10 members of an international crime ring suspected of organ trafficking in Europe, European Union law enforcement officials said. The officials said the suspects had targeted impoverished people in Moldova, Kazakhstan, Russia, Ukraine and Belarus.

### Presumed Consent is moral

#### Presumed content is a significant moral improvement

Michael B. Gill, University of Arizona (Published in the Journal of Medicine and Philosophy), 2004, “Presumed Consent, Autonomy, and Organ Donation,” accessed July 19, 2013, http://www.u.arizona.edu/~gillm/media/articles/presumedconsent.pdf

Cohen has given the following argument for the claim that presumed¶ consent would do a better job than the current system at respecting people’s¶ wishes (Cohen, 1992, p. 2169). About 70% of Americans would prefer to¶ donate their organs for transplantation after their death. But fewer than 70% of¶ the organs suitable for transplantation are donated. This is because many¶ people who want to donate their organs do not leave indications of their¶ desires that are clear enough to overcome the current system’s initial¶ presumption against removing organs for transplantation. As a result, many¶ who wanted to donate their organs after death are buried with all their¶ organs intact inside their bodies. This violates their wishes about what¶ should happen to their bodies after death. A policy of presumed consent,¶ however, would result in people’s wishes being respected at least 70% of the¶ time, and probably much more than that, so long as the policy includes a well publicized¶ opt-out opportunity. This would almost certainly constitute an¶ increase over the current system in the number of decedents whose wishes are¶ respected.

#### Respecting the wishes of now dead individuals is key – mistaken donation and mistaken non-donation are on moral par

Michael B. Gill, University of Arizona (Published in the Journal of Medicine and Philosophy), 2004, “Presumed Consent, Autonomy, and Organ Donation,” accessed July 19, 2013, http://www.u.arizona.edu/~gillm/media/articles/presumedconsent.pdf

It is reasonable to hold that the non-interference model of autonomy ought¶ to govern our treatment of competent individuals. If someone is awake and¶ aware, then we ought to assume that he would tell us if he wanted us to do¶ anything to his body. So we ought not to do anything to the body of someone¶ who is awake and aware unless he gives us explicit permission to do so.¶ But it is not reasonable to hold that the non-interference model ought to¶ govern our treatment of brain-dead individuals. For the non-interference¶ model implies that we would have to refrain from doing anything at all to the¶ bodies of brain-dead individuals who had left no explicit instructions about how they wanted their bodies to be treated. But we have to do something to the¶ bodies of such people. We have to treat them in one way or another. Literal¶ non-interference – letting their bodies lay untouched where they fall – is not¶ an option. So how do we go about trying to respect the autonomy of the braindead?¶ We do so by acting under the respect-for-wishes model of autonomy,¶ which tells us to do our best to treat persons’ bodies in the ways they wanted¶ them to be treated. On this model, each type of mistake is on a moral par, for¶ each type of mistake involves treating a person’s body in a way the person did¶ not want.

#### Presumed consent would improve the decision-making process for donation for everyone involved

Veronica English, deputy head of medical ethics, May 26, 2007, “Is presumed consent the answer to organ shortages? Yes,” accessed July 21, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1877927/

We all have the same aim: to improve donation rates. Current efforts to achieve this should be supported, but how long should we continue to doggedly pursue the same strategy that has failed, so dramatically, to improve donation rates over the past decade? We cannot afford to wait another five years before beginning to consider alternatives because the longer we procrastinate the more lives are lost unnecessarily. Now is the time for a public debate about presumed consent so we are ready to implement it when, as seems likely, we are having the same debate in five years' time.¶ A move to presumed consent is the way forward. It would be:¶ Good for those who support donation—because they have to make no effort to ensure their wishes are followed.¶ Good for those who oppose donation—because their wishes will be formally recorded and must be followed.¶ Good for families—because they are relieved of the burden of decision making when they have just been told their relative has died or is dying.¶ Good for those who need a transplant—because with more organs available more lives can be saved.

### Presumed Consent doesn’t violate ethics

#### Presumed consent makes sense from both utilitarian and deontological perspectives

David Orentlicher, Professor of Law at Indiana University School of Law, J.D., MD. Harvard Medical School, 2009, “Presumed Consent to Organ Donation: Its Rise and Fall in the United States,” accessed July 22, 2013, http://pegasus.rutgers.edu/~review/vol61n2/Orentlicher\_v61n2.pdf

The desire to abandon presumed consent is not obvious. Indeed,¶ the idea of presumed consent has much to commend it. When people¶ die, their hearts, lungs, livers, and kidneys are no longer useful to¶ them, but the organs can prolong the lives of other people, whose own¶ organs have failed. Why waste precious organs by burying them? If¶ presumed consent would increase the likelihood that a person’s¶ organs would be transplanted to someone else after the person’s¶ death, then social welfare would be greater. From a utilitarian¶ perspective, the adoption of presumed consent makes considerable¶ sense.¶ One can adduce powerful deontological arguments as well for¶ presumed consent. There is much appeal to the position that people¶ do not “own” their bodies in the way that they own their homes, cars,¶ or clothing. In this view, bodies are not property to be sold or even¶ given away at the discretion of the individual. Rather, people hold¶ their organs in stewardship for God or for society, and when they¶ have gotten their full benefit from the organs, it is time to pass the¶ organs onto other persons who can continue to benefit.

#### Presumed consent systems can have significant safeguards to prevent error and ethical violation

Veronica English, deputy head of medical ethics, May 26, 2007, “Is presumed consent the answer to organ shortages? Yes,” accessed July 21, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1877927/

Presumed consent is often portrayed in its extreme form where, if an individual has not opted out, the organs will automatically be available for donation. However, the system proposed for the UK would continue to involve the family. Before a change to presumed consent there would be extensive publicity advising people how to opt out. Mechanisms must be in place to ensure all sections of the public are informed and can register an objection easily.¶ With the new system in place, when a person is identified as a potential donor doctors must check the opt-out register. If the person has not opted out, the relatives are informed of this and, as an added safeguard, are asked if they are aware if the person has any unregistered objection. If the answer is no, the relatives are informed of the intention to proceed with donation. However, the organs would not be used if it would cause severe distress to the relatives. In this way, relatives are still involved but the approach is easier for all concerned.

#### Ethical questions clearly side with presumed consent

Arthur Caplan, professor of bioethics at the University of Pennsylvania School of Medicine, May 2, 2010, “The Ethical Good of the ‘Yes’ Option,” accessed July 22, 2013, http://roomfordebate.blogs.nytimes.com/2010/05/02/should-laws-encourage-organ-donation/

Cards and licenses get lost or misplaced or those who sign them fail to talk about their wishes with their families meaning that organs are buried or cremated when they could be saving lives.¶ There is a better and more ethical solution, and Assemblyman Brodsky’s proposed legislation has pinpointed it — presumed consent or more felicitously, default to donation. Since most of us want to be organ donors upon our deaths, why demand that we carry cards or directives to prove it?¶ Why not put the burden on those who do not want to participate and require that they make their objection known by directive, through a family objection or in a state computer registry?¶ The ethical case is clearly on the side of defaulting to donation. There is nothing coerced or disrespectful in asking those who do not want to be donors upon their death to say so. Consent and altruism remain core values of organ donation — only the emphasis changes from the presumption of a “no” to one of “yes.”

## NEG Case

Hello everyone, I would like to begin by thanking my opponent and the judge for being here today. I am here to negate the resolution: A just society ought to presume consent for organ procurement from the deceased. Before presenting my value, criterion and contentions, I will clarify a key term in today’s debate.

I define “Just” as: “based on right; rightful,” – a just society must respect the right of its people to control of their own bodies

I define “Society” as: “a highly structured system of human organization for large-scale community living that normally furnishes protection, continuity, security, and a national identity for its members” (Source: Dictionary.com Unabridged, Based on the Random House Dictionary)

This should limit the debate to legal policies of presuming consent.

Value: Deontology

My Criterion today is Deontology. The value of deontology allows us to examine whether an action or policy is just without observing the eventual consequences of that policy. Even if a presumed consent policy could result in some positive consequences, the means of achieving such a goal are not just and violate the autonomy of individuals.

Criterion: Individual Autonomy

My criterion in today’s debate is autonomy, or the freedom of individual’s to exercise their own agency, and make their own decisions. In the case of this resolution, only a society that upholds the autonomy of individual’s and their right to control the fate of their own body can be considered a just society.

#### Contention One: Presumed consent reduces organ donation

#### Presumed consent policy could cause backlash against organ donation

Emilia Benton, staff writer for Nephrology Times, December 2010, “Presumed Consent: More Deceased-Donor Kidney Transplants, but Fewer Living-Donor Transplants,” accessed July 22, 2013, http://journals.lww.com/nephrologytimes/Fulltext/2010/12000/Presumed\_Consent\_\_More\_Deceased\_Donor\_Kidney.6.aspx

There also is the worry that implementing a system of presumed consent in the United States could have the opposite of its intended effect.¶ “Another major concern as a transplant community is that if there is presumed consent, it could actually backfire and end up decreasing organ donation in the United States,” Dr. Harmon said.¶ “The basis of consent is trust that the organs in the system are being retrieved only after the person has been declared dead, only after there is no hope for recovery of the patient, and that all attempts to save the potential donor's life have been exercised before raising the question of whether or not the person would make a good organ donor.”¶ Presumed consent can be a double-edged sword, he said.¶ “If you're in a situation where informed consent is accepted by the culture of the community, then there is no question that it probably would increase the organ donation rates. But given the fact that there may be a backlash that led to accusations that the organs were obtained inappropriately, it could lead to a decrease.¶ “So there are two sides to this issue. The paper demonstrated one upside, which is that it is likely that the adoption of presumed consent, if it were successful, would increase donation rates. It doesn't address the other question, which is, what if there is a backlash?”

There is likely a reason that so many individuals and families current choose not to donate. If a policy were implemented to presume consent, many individuals would likely backlash against the idea of donating itself, causing a net decrease in organ donation.

#### Further, presumed consent is not responsible for increasing organ donation abroad

David Orentlicher, Professor of Law at Indiana University School of Law, J.D., MD. Harvard Medical School, 2009, “Presumed Consent to Organ Donation: Its Rise and Fall in the United States,” accessed July 22, 2013, http://pegasus.rutgers.edu/~review/vol61n2/Orentlicher\_v61n2.pdf

Part of the uncertainty about the impact of presumed consent¶ laws reflects an important gap between law and practice—doctors in¶ presumed consent countries typically seek family consent even¶ though the family’s consent is not required. In addition, presumed¶ consent countries with high retrieval rates employ other measures to¶ increase the organ supply, and those other measures may be¶ responsible for the higher rates. Spain’s high rate of organ¶ donation, for example, appears to reflect a well-developed organ¶ transplant system overseen by a national network of specially trained¶ and highly-motivated transplant physicians. In fact, while¶ Spain has the highest donor rate ever reached by a country and its¶ law calls for presumed consent, doctors always seek family consent,¶ and they always respect the wishes of the next of kin.¶ In short, the evidence from other countries confirms the¶ experience in the United States that it is difficult, and perhaps¶ impossible, to implement presumed consent without family¶ involvement.

While many European countries have successfully increased organ donation rates, presumed consent policy is far from the reason why.

#### Contention two: Presumed consent is unethical

#### Presumed consent violates the autonomy of individuals

Christopher Jones, staff writer for Bioethics Bytes, November 8, 2011, “Headline Bioethics: Change to organ donation law in Wales?” accessed July 22, 2013, http://bioethicsbytes.wordpress.com/2013/01/09/headline-bioethics-change-to-organ-donation-law-in-wales/

One ethical argument against presumed consent suggests that it violates the patient’s right to make an informed decision, and so does not uphold respect for their autonomy (Gillon, 1994). The specific purpose of informed consent is to protect a patient’s right to autonomy, as made clear by both the Universal Declaration on Bioethics and Human Rights (UNESCO, 2005) and the Declaration of Helsinki (World Medical Association, 2008). Enforcing presumed consent would remove the need for informed consent, and as such would be “a violation of an individual’s autonomy” (Kurosu, 2008). Presumed consent, it is argued, forces patients either to become donors, or to state their wish to not become donors; in both instances the patient’s autonomy is violated, as “compelling patients is unethical” (Kurosu, 2008). This deontological argument suggests a move to presume consent in Wales would be intrinsically unethical. Similarly, Kennedy et al. (1998) consider that a government body “assuming possession of our body parts” would be “a step too far”.

Presumed consent policy would likely cause many individuals who failed to clearly indicate their desire to “opt out” to have their organs harvested against their wishes. Presumed consent is therefore unethical.

#### Contention three: There are numerous alternative methods that could solve the organ donation shortage

#### Alternative methods like mandated choice are preferable solutions

Aaron Spital, MD, July 1996, “Mandated Choice for Organ Donation: Time To Give It a Try,” accessed July 22, 2013, http://books.google.com/books?hl=en&lr=&id=GPw560sBVa8C&oi=fnd&pg=PA264&dq=presumed+consent+ethics&ots=IwQ7A3F666&sig=fph8i3ko3cB111N-pYWqbyV\_tPw#v=onepage&q=presumed%20consent%20ethics&f=false

This proposal to transfer control away from the family and back to the individual is consistent with the intent of the Uniform Anatomical Gift Act, which states that the wishes of the individual are paramount. Furthermore, the Council on Ethical and Judicial Affairs of the American Medical Association recently concluded that “the individual’s interest in controlling the disposition of his or her own body and property after death suggests that it is ethically preferable for the individual, rather than the family, to decide to donate organs”. Similar views have been expressed by many philosophers and ethicists, and several surveys suggest that most of the public agrees. How can such an individualistic approach be achieved? Mandated choice has been proposed as an alternative method for obtaining consent, which is designed to accomplish precisely this. Under mandated choice, all competent adults would be required to decide and record whether or not they wish to become organ donors upon their deaths. This could be accomplished by asking about organ donation on driver’s license applications, tax returns, or official state identification cards. The application or tax return would not be accepted until the question of donation was answered.

Mandated choice would be a viable alternative to presumed consent that would offer hospitals undisputable evidence of the potential donor’s wishes. Eliminating the “default” option would allow the organs to be harvested from willing individuals as well as prevent organs from being harvested from unwilling individuals. Alternative policy options like this would be certainly more just for a society to adopt. For these reasons, I negate the resolution.

## NEG Extension Evidence Presumed consent policy reduces donation

#### Presumed Consent policies cause backlash

Simon Bramhall, published in the Ann R. Coll Surgery Journal, May 2011, “Presumed consent for organ donation: a case against,” accessed July 18, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3363073/

A number of countries have a system of presumed consent, including Spain, but very few use the system in practice. In Spain presumed consent had been part of statute for 10 years prior to the organisational changes without any effect on rates of donation. The US does not have presumed consent legislation. Both have impressive rates of organ donation and both have seen a rapid increase in a relatively short period of time. Sweden switched to a presumed consent system in 1996 but continues to have very poor rates of organ donation (10 PMP) and attempts to introduce presumed consent legislation in Brazil and France led to a backlash against organ donation.

#### Presumed consent legislation is vehemently opposed by many religious groups

Carl Roberts, BBC Wales political reporter, July 2, 2013, “AMs to vote on 'presumed consent' organ donation plans,” accessed July 19, 2013, http://www.bbc.co.uk/news/uk-wales-politics-23136965

The Welsh government wants to introduce a system where individuals will be presumed to have consented for their organs to be donated after death unless they have specifically objected.¶ But opponents want families to be able to stop a donation if their relative did not express an opinion either way.¶ Ministers want to increase the number of donors for transplant by a quarter.¶ There has been opposition to the changes from Christian churches and from within the Muslim and Jewish communities.¶ It would mean a change from the current opt-in system, where would-be donors have to sign a register.¶ A statement from faith leaders and health professionals - signed by the Archbishop of Wales Dr Barry Morgan and others - calls for a so-called "soft opt-out scheme" in the Human Transplantation Bill.¶ They say it would give deceased patients' families a say on donation if their relative had neither opted in or out.¶ A joint statement says that failure to make changes to the bill would be "inhuman, unfeeling before the suffering of relatives, and a danger to the public trust and support which are necessary for the practice of organ donation to flourish".

#### Presumed consent scares people away from donating

Linda Wright, bioethicist, May 26, 2007, “Is presumed consent the answer to organ shortages? No,” accessed July 21, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1877889/

Presumed consent refers to laws that permit the procurement of organs without explicit permission.3 The term is used widely in discussion of systems of opting in or opting out of organ donation. The US Institute of Medicine is concerned that the introduction of presumed consent without the appropriate public support could reduce donation rates in countries where autonomy is highly prized, such as North America. People may be more likely to donate when they feel they retain control of that decision rather than the law dictating that donation should take place. Brazil had to withdraw its system of presumed consent because it aggravated mistrust in the healthcare system.

### Presumed consent policy violates autonomy

#### Presumed consent would violate the wishes of many who fail to clearly indicate their desire not to donate

Michael B. Gill, University of Arizona (Published in the Journal of Medicine and Philosophy), 2004, “Presumed Consent, Autonomy, and Organ Donation,” accessed July 19, 2013, http://www.u.arizona.edu/~gillm/media/articles/presumedconsent.pdf

Veatch and Pitt have given the following argument for the claim that¶ presumed consent is morally unacceptable because it violates persons’ wishes¶ about what should happen to their bodies after death (Veatch & Pitt, 1995,¶ pp. 1889-1890). About 30% of Americans prefer not to donate their organs¶ for transplantation after their death. But if presumed consent was implemented,¶ some portion of that 30% would fail to indicate their desire not to¶ donate. As a result, some people who wanted to buried with all their organs¶ intact would have their organs removed. This would violate their wishes about¶ what should happen to their bodies after death. Under the current system, in¶ contrast, it is very unlikely that organs will be removed from the body of¶ someone who did not wish to donate. The current system thus does a better¶ job than presumed consent at respecting the wishes of those who do not want¶ to donate their organs after death.

#### Presumed consent presents the illusion of choice

R.M. Veatch and J.B. Pitt, published in “Arguing About Bioethics,” April 4, 2012, “The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies,” accessed July 21, 2013, http://books.google.com/books?hl=en&lr=&id=GPw560sBVa8C&oi=fnd&pg=PA264&dq=economic+effect+presumed+consent+organ+procurement&ots=IwQ7z4I9b7&sig=F-n5mb8300xIWIkuPOKbe9zdwrQ#v=onepage&q&f=false

It is important to see why consent cannot validly be presumed in the present cultural environment. To presume consent is to make an empirical claim. It is to claim that people would consent if asked, or, perhaps more precisely, that they would consent to a policy of taking organs without explicit permission. The reasoning behind true presumed consent laws is that it is legitimate to take organs without explicit consent because those from whom the organs are taken would have agreed had they been asked when they were competent to respond. That, however, is a claim which, if it is to be made with authority, must be corroborated with empirical evidence. Social survey evidence makes clear that if we assume people would agree to having their organs procured If they were asked, we would be wrong at least 30 percent of the time. A recent 1993 Gallup poll shows that only 37 percent of Americans are “very likely” to want their organs transplanted after their death, and only 32 percent are “somewhat likely.” Furthermore, only 55 percent are willing to grant formal permission for organ removal.

#### Voluntary consent is absolutely necessary

R.M. Veatch and J.B. Pitt, published in “Arguing About Bioethics,” April 4, 2012, “The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies,” accessed July 21, 2013, http://books.google.com/books?hl=en&lr=&id=GPw560sBVa8C&oi=fnd&pg=PA264&dq=economic+effect+presumed+consent+organ+procurement&ots=IwQ7z4I9b7&sig=F-n5mb8300xIWIkuPOKbe9zdwrQ#v=onepage&q&f=false

What is at stake is something very fundamental: the ethics of the relation of the individual to the society. A pioneer in the study of contemporary medical ethics, Paul Ramsey, introduced the issue in distinguishing between organ procurement in the modes of “giving” and “taking.” In liberal Western society certain rights are attributed to the individual. Among these is the right to control what is done with one’s body. Hence, in Western culture medical treatment is acceptable only with the consent of the individual or the individual’s appropriate surrogate. Research on a human subject is ethically acceptable only when consent is obtained. According to the Nuremberg Code, such voluntary consent is absolutely essential. An individual is in a position whereby he or she has the authority to give to society by authorizing medical research and now by authorizing procurement of organs for transplant, research, therapy, and other purposes.

### Presumed consent policy will be abused by physicians

#### Presumed consent policy can easily be abused by coroners or doctors

David Orentlicher, Professor of Law at Indiana University School of Law, J.D., MD. Harvard Medical School, 2009, “Presumed Consent to Organ Donation: Its Rise and Fall in the United States,” accessed July 22, 2013, http://pegasus.rutgers.edu/~review/vol61n2/Orentlicher\_v61n2.pdf

For those who worry that transplant professionals will abuse¶ their presumed consent authority, they need look no further than the¶ litigation over presumed consent statutes in the United States.¶ Recall the Brotherton case in which an Ohio coroner went out of his¶ way to avoid discovering objections to cornea retrieval from¶ decedents. That case ultimately led to a settlement in which¶ $5,250,000 was paid to compensate the families harmed by the¶ coroner’s policy. Similarly, in Newman, the coroner also took extra¶ steps not to discover objections to donations, profiting to the tune¶ of $250,000 a year. That case was ultimately settled under an¶ agreement of confidentiality, and the California legislature¶ responded to the public outrage by repealing its presumed consent¶ statute. These cases provided validation to people who were¶ concerned that doctors would abuse their authority when they¶ could act without the need for consent; the cases ultimately led the drafters of the 2006 UAGA to drop their support for presumed¶ consent and most states to abandon presumed consent.¶ The public response to the coroners’ actions in Brotherton and¶ Newman may have reflected not only concerns about coroners¶ ignoring the interests of dead persons and their families; there also¶ appears to have been real concern with the evidence suggesting that¶ presumed consent was implemented in a discriminatory fashion.

#### Presumed consent often harvests organs in discriminatory fashion

Necia B. Hobbes, J.D., University of Pittsburgh School of Law, April 8, 2013, “Out of the frying pan into the fire: Heightened discrimination & reduced legal safeguards when pandemic strikes,” accessed July 22, 2013, http://d-scholarship.pitt.edu/18024/1/171-341-1-SM.pdf

The compounded effect of several types of discrimination may cause¶ disparities not only in distributing scarce healthcare resources, but also in¶ procuring such resources. For example, institutional and unconscious¶ discrimination may explain apparent disparities in involuntary cornea¶ donations. Until recently, minorities may have been more likely to have their¶ corneas harvested without their consent. Presumed consent laws in many¶ areas of the United States gave coroners the right to assume a deceased¶ person’s intent to donate their corneas in the absence of evidence otherwise. These laws have been withdrawn in most states for a variety of reasons, but¶ while they existed, they seem to have resulted in both institutional and¶ unconscious—or perhaps even overt—discrimination against minorities.¶ Institutional discrimination resulted from presumed consent systems’¶ proclivity to harvest from victims of violence (who are disproportionately¶ minorities), and “disparities may exist when coroners or medical examiners¶ decide whether to retrieve organs or tissues from a dead person under their¶ custody.”

#### Presumed consent policy allows physicians to disregard family/patient wishes and act with discrimination

David Orentlicher, Professor of Law at Indiana University School of Law, J.D., MD. Harvard Medical School, 2009, “Presumed Consent to Organ Donation: Its Rise and Fall in the United States,” accessed July 22, 2013, http://pegasus.rutgers.edu/~review/vol61n2/Orentlicher\_v61n2.pdf

On closer consideration, concerns about fairness are very serious.¶ While the state statutes cover any person who comes under the¶ custody of a coroner or medical examiner, the population of such¶ persons may be disproportionately poor and minority, at least in¶ major urban centers. Moreover, disparities may exist when¶ coroners or medical examiners decide whether to retrieve organs or¶ tissues from a dead person under their custody. When the Los¶ Angeles Times exposed the cornea retrieval practices of the county¶ coroner, the newspaper found that that over 80% of the corneas came¶ from blacks or Latinos even though only 44% of autopsies involved¶ blacks or Latinos. Given the overrepresentation of minorities and¶ poor persons, one has to wonder whether the presumed consent¶ statutes would ever have been passed if they applied equally to¶ wealthy white families as to poor black families.¶ In sum, the experience in the United States with presumed¶ consent can easily be seen by the public as validation for their fears¶ that physicians will abuse their authority when families are excluded¶ from the organ donation decision. Apparently, physicians will take¶ organs in disregard of people’s wishes, and they will do so in a¶ discriminatory fashion.

### Presumed consent policy will fail

#### Presumed consent won’t overcome the objection of families if they are allowed a veto

David Orentlicher, Professor of Law at Indiana University School of Law, J.D., MD. Harvard Medical School, 2009, “Presumed Consent to Organ Donation: Its Rise and Fall in the United States,” accessed July 22, 2013, http://pegasus.rutgers.edu/~review/vol61n2/Orentlicher\_v61n2.pdf

It turns out, however, that organ donation is not frustrated by¶ the inability of transplant personnel to contact family members.¶ Rather, a key reason why organs are not obtained after a person’s¶ death is the unwillingness of family members to give consent.¶ Studies have shown that physicians generally are able to talk to¶ family members about donation, but family members often refuse to¶ permit donation. For example, in one careful, national study,¶ researchers found that a family member was unavailable to give¶ consent in less than 3% of cases, but that when family members were¶ asked, they did not give consent 46% of the time. Other researchers¶ also have found a refusal rate of about 50% from families. Because¶ presumed consent as implemented in the United States allowed¶ families to object to donation, it did not address the problem of¶ refusal by family members.

#### The public opposes presumed consent

Diane L. Manninen (PhD) and Roger W. Evans (PhD), The Journal of the American Medical Assocation, June 7, 1985, “Public Attitudes and Behavior Regarding Organ Donation,” accessed July 19, 2013, http://jama.jamanetwork.com/article.aspx?articleid=398795

Organ transplantation has been the subject of much attention; unfortunately, relatively little has been published about public attitudes toward organ donation. To better document public perceptions on organ donation, a telephone survey of a nationally representative sample of 2,056 respondents was conducted. We found that nearly 94% of the population had heard about organ transplantation, but only 19% of these people carried donor cards. The results indicated that people are somewhat more likely to donate the organs of a relative who had just died (53%) than they are to donate their own organs (50%). People were most likely to donate kidneys (50%) and least likely to donate skin (40%). Most respondents (58%) felt that next of kin should not be able to override a person's desire to donate organs as signified by an organ donor card. Few people (7%) supported the concept of presumed consent. We conclude that while the public is supportive of organ transplantation, it is not overly enthusiastic about organ donation. Awareness of this paradox on behalf of the public may actually facilitate organ donation.

#### Consent rates don’t equal donation rates

Simon Bramhall, published in the Ann R. Coll Surgery Journal, May 2011, “Presumed consent for organ donation: a case against,” accessed July 18, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3363073/

The question of whether the UK should change to a system of presumed consent is a finely balanced one, generating impassioned debate and a wide range of opinion. There is no doubt that there is an urgent need to address the poor and reducing rates of organ donation in the UK and superficially several factors support a change in the legislation. The consent rates in the UK are poor when compared with other European countries (approximately 60% compared with over 80% in Spain); however, UK consent rates are actually very similar to those in the US but donation rates in the UK are half that of the US. This implies that there are factors other than consent rates that need addressing in the UK prior to blaming our low rates of organ donation on family consent.

### Alternative methods are preferable

#### Spain has significantly increased donation rates with alternative methods

Simon Bramhall, published in the Ann R. Coll Surgery Journal, May 2011, “Presumed consent for organ donation: a case against,” accessed July 18, 2013, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3363073/

In 1989 the Spanish government invested heavily in the organisational structure of organ donation. They radically increased the number of donor coordinators and ensured that every hospital in Spain had its own coordinator. They commenced a continuous BSD audit throughout Spain and invested heavily in education and advertising. In addition they introduced a fee structure to reimburse hospitals that provide organ donors. Over the course of the last 20 years the number of organ donors in Spain has increased from 550 to more than 1,500 per year (similar population to the UK) and these results have been reproduced using this system in Italy.¶ The Spanish have addressed the family consent rate by adopting a long contact method in which donor coordinators identify potential organ donors at a very early stage (using clinical triggers) and spend a long time getting to know the family of the potential organ donor. Should the patient become BSD they have an established relationship with the family. Data from Spain have suggested that family consent rates are more than doubled when a coordinator is able to spend three or more hours with a family when compared with less than one hour.

#### Mandated choice could increase organ donation more fairly

Aaron Spital, MD, July 1996, “Mandated Choice for Organ Donation: Time To Give It a Try,” accessed July 21, 2013, http://annals.org/article.aspx?articleid=709792

A severe shortage of organs greatly limits the ability to deliver the miracle of transplantation to people suffering from end-stage organ disease. Contributing to this shortage is a high rate of refusal among families who are asked for permission to remove organs from a recently deceased relative. Mandated choice offers an alternative to obtaining consent from the family by returning control to the individual. This plan would require all adults to record their wishes about posthumous organ donation and would consider those wishes binding. By moving the decision-making process to a relaxed setting and ensuring that a person's wishes would be honored, mandated choice would hopefully take advantage of favorable public attitudes toward donation and thereby facilitate organ procurement. Preliminary research suggests that public commitment to organ donation would increase under mandated choice. A pilot study of this promising proposal should be undertaken.

#### Investing in education and management of a transplant system is more important than presumed consent

Kieran Healy, associate professor in sociology at the Kenan Institute for Ethics at Duke University, May 2, 2010, “Why Revive Old Fears?” accessed July 22, 2013, http://roomfordebate.blogs.nytimes.com/2010/05/02/should-laws-encourage-organ-donation/

Spain is routinely cited as a successful example of presumed consent. But in Spain the next-of-kin still has veto power. Most of the growth in donation rates there happened well after the passage of presumed consent legislation.¶ Spain’s success is due to effective management of the transplant system, not a simple legal rule. Similarly, Italy’s donation rate grew rapidly in the 1990s thanks to investment in its system, not because of its long-standing presumed consent law. Some countries, notably Austria, do have “true” presumed consent, with no kin veto. But they do not outperform countries like the U.S. by any great margin.¶ It’s also worth remembering that, since the 1970s, the U.S. “transplant community” has worked hard to allay public concerns that surgeons might be too eager to harvest organs, or that the state might play too calculating a role in deciding what happens to the bodies of potential donors. Support for donation was built up by publicizing the now familiar idea that organ donation is a unique, even sacred, sort of gift. A naive presumed consent proposal would run straight into this established understanding of donation.